IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

:: J U D G M E N T ::

S.B. CRIMINAL APPEAL NO.102/1987
(Mehar Singh Vs. The State of Rajasthan)

S.B. CRIMINAL APPEAL UNDER SECTION 374 Cr.P.C. AGAINST THE JUDGMENT DATED 26.03.1987 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE NO.1, HANUMANGARH, CAMP SANGARIYA IN SESSIONS CASE NO.53/1982 – STATE VS. MEHAR SINGH & ANR.

DATE OF JUDGMENT : 19th November, 2007

P R E S E N T

HON'BLE MR. JUSTICE DEO NARAYAN THANVI

Mr. Vineet Jain for
Mr. Sandeep Mehta for the appellant.
Mr. JPS Choudhary, Public Prosecutor.

BY THE COURT :

1. This appeal is directed against the judgment & order dated 26.03.1987 passed by the learned Additional Sessions Judge

No.1, Hanumangarh, Camp Sangariya in Sessions Case No.53/1982, whereby, he convicted accused appellant Mehar Singh for offence under Section 307 IPC and sentenced him to four years' rigorous imprisonment and to pay a fine of Rs.200/-, in default of payment of fine to further undergo 15 days' simple imprisonment. Accused appellant Mehar Singh was also convicted for offence under Section 27 of the Indian Arms Act and sentenced to 6 months' rigorous imprisonment and to pay a fine of Rs.100/-, in default of payment of fine to further undergo 15 days' simple imprisonment. Both the sentences were ordered to run concurrently.

2. According to the prosecution, accused appellant Mehar Singh along with accused Hajura Singh were tried for offence under Sections 307 & 326 IPC and Section 27 of the Indian Arms Act with respect to an incident alleged to have taken place on 8.4.82 at 6.30 am. Charge against accused appellant was that on that day, when Nichhatra Singh, Chet Ram, Balbeer Singh and Dheer Singh were preparing to go to their filed, accused appellant Mehar Singh along with Hajura Singh attacked on them and accused appellant Mehar Singh fired a gun shot injury on Dheer Singh. Accused Hajura Singh ran away along with his rifle. Report of the incident was lodged vide Ex.P-7.

3. After usual investigation, police filed the challan. A cross case was also registered against Dheer Singh and six others for causing injuries to accused appellant Mehar Singh, whereby, learned Additional Sessions Judge No.1, Hanumangarh, Camp Sangariya convicted Deputy Singh for offence under Section 307 IPC and Nichhatar Singh for offence under Section 27 of the Indian Arms Act and passed sentence of 4 years' rigorous imprisonment and to pay a fine of Rs. 200/-. Accused appellant pleaded not guilty to the charge levelled against him. The prosecution examined five witnesses. After recording the statement of the accused, arguments were heard and the learned trial Judge acquitted accused Hajura Singh for offence under Section 307/34 IPC and convicted accused appellant Mehar Singh as indicated above.

4. It has been argued by learned counsel for the accused appellant that in the cross case, whereby, Deputy Singh and Nichhatar Singh have been convicted by the learned trial court, this Court has allowed their appeal and their conviction for offence under Section 307 IPC has been set aside. In that case, the learned Single Judge of this Court came to the conclusion that firstly Mehar Singh caused gun shot injuries on accused Dheer Singh and, thereafter, appellants in the cross case had no option but to protect accused Dheer Singh from further causing

injury at the hands of Mehar Singh and while doing so, they acted in exercise of their right of private defence. If this finding of the learned Single Judge in cross case is looked into in the light of the present case, it is clear that present accused appellant Mehar Singh was the aggressor and he first fired on Dheer Singh. This is evident from the evidence of prosecution witnesses namely PW-1 Dheer Singh and PW-2 Balbeer Singh.

5. PW-4 Dr. Kundan Lal has proved the Injury Report Ex.P-5, in which, it is stated that right lower limb was blue below knee with no pulsations. Limb was cold. There was no sensations below mid thigh level. At mid thigh knee on the Rt. Side he had one 1½" x ½" size lacerated wound with margin evested on the lateral aspect. There were 3 puncture wounds of ¼" x ¼" size just posterior to the above wound. There was a wound of 1" x 2" size over the anterior aspect mid thigh lacerated wound margin evested. On the medial aspect of the mid thigh there was a 2" x 2" wound (lacerated) with evested margin. Inflicting sharp injury on the thigh and its nature as indicated above itself shows that accused appellant was the aggressor and the learned trial court has rightly convicted him for offence under Section 307 IPC and Section 27 of the Indian Arms Act. There seems force in the contention of the learned counsel for the accused appellant that there was a cross case between the parties, in

which, injured have been acquitted, therefore, it will be proper to sentence accused appellant Mehar Singh to the period already undergone, which is about four months, by enhancing the fine particularly when the incident is more than 25 years old.

6. Accordingly, this appeal is partly allowed. While maintaining the conviction of accused appellant Mehar Singh for offence under Section 307 IPC and Section 27 of the Indian Arms Act, he is sentenced to the period already undergone. The fine is enhanced from Rs.200/- to Rs.20,000/-. Half of the amount shall be paid to the complainant. The fine of Rs.100/- for offence under Section 27 of the Indian Arms Act is maintained. Learned counsel for the accused appellant submits that to tress out the accused appellant and to deposit the fine of Rs.20,000/-, one month's time may be granted. Prayer is allowed. Time is granted accordingly.

(DEO NARAYAN THANVI), J.

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